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Message Text

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ACTION IO-14

INFO OCT-01 ISO-00 AF-10 ARA-10 EA-10 EUR-12 NEA-10
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NSAE-00 USIA-06 OPIC-03 SP-02 TRSE-00 LAB-04
SIL-01 AGRE-00 OMB-01 SS-15 FTC-01 JUSE-00 SEC-01
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E.O. 11652:N/A
TAGS: EGEN, UN, ECOSOC, EINV
SUBJECT: WORKING GROUP ON CODE OF CONDUCT RELATING TO TRANSNATIONAL CORPORATIONS: MARCH 20 AND 21 SESSIONS.

1. SUMMARY. OPENING TWO DAYS OF IGWG ON CODE OF CONDUCT CONTINUED POSITIVE TONE OF PREVIOUS SESSION. THERE HAS BEEN NO SIGNIFICANT PROGRESS IN NARROWING FUNDAMENTAL POLICY CONFLICTS BETWEEN DEVELOPED COUNTRIES AND G-77, HOWEVER, AS DIFFERENT DELEGATIONS CONTINUE TO PRESENT THEIR OWN DIFFERING VIEWS ON ISSUES DISCUSSED. WEO MEMBERS CONTINUE TO WORK WELL TOGETHER AND NO SIGNIFICANT DIFFERENCES HAVE EMERGED (ALTHOUGH WE EXPECT SOME TO EMERGE WHEN DISCUSSION ON INFORMATION SYSTEM STARTS ON MARCH 22.) OECD CONTACT GROUP SELECTED TERRY COLLI OF CANADA AS NEW CHAIRMAN.

2. CHAIRMAN NIKLASSON PRESSURES TO HAVE GROUP FINISH SECTIONS III AND IV OF CHAIRMAN'S OUTLINE BY FRIDAY SO THAT NEW EXPANDED SECRETARIAT OUTLINE CAN BE MADE
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AVAILABLE OVER THE WEEKEND AND DISCUSSED ALL OF NEXT WEEK. IN FIRST TWO DAYS, SUBSTANTIVE DISCUSSION TOOK PLACE ON BALANCE OF PAYMENTS, TRANSFER PRICING, TAXATION, AND CONSUMER PROTECTION. SECRETARIAT AUTHORIZED TO PREPARE PAPER FOR NEXT SESSION OF GROUP (PRESUMABLY IN THE FALL) ON RELEVANCE OF ONGOING WORK IN OTHER FORUMS SUCH AS UNCTAD ON RESTRICTIVE BUSINESS PRACTICES AND TRANSFER

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OF TECHNOLOGY, ECOSOC ON ILLICIT PAYMENTS, AND ILO ON LABOR AND EMPLOYMENT; AT U.S. INSISTENCE, SCOPE OF PAPER WILL BE LIMITED AS DISCUSSED IN PARA 6 BELOW. END SUMMARY.

3. BALANCE OF PAYMENTS. (SECTION III(B)(2) OF CHAIRMAN'S OUTLINE) WORK RESUMED WITH ANNOTATION CONCERNING REPATRIATION BY TNCS OF CAPITAL AND REMITTANCE OF PROFITS. THERE WAS NO OPPOSITION TO THE RIGHT OF STATES TO REGULATE REPATRIATION BUT VARIOUS QUALIFICATIONS SUGGESTED, WITH OECD DEL NOTING CIEC G-8 TEXT ON EXCEPTIONAL BOP DIFFICULTIES. U.S. AND SOME OTHER DELEGATES SUGGESTED LINKS TO SECTION IV IN TERMS OF CONFLICTS BETWEEN HOME AND HOST GOVERNMENTS AND NEED FOR CLARITY AND PREDICTABILITY OF GOVERNMENT REGULATION. DISCUSSION OF REINVESTMENT POINT REVEALED CONFLICT OFPOLICIES OF VARIOUS GOVERNMENTS REGARDING DEVELOPMENT AND REDUCTION OF FOREIGN INVESTMENT PRESENCE, AND GROUP EVENTUALLY DECIDED TO DELETE IT. DISCUSSION OF SPECULATIVE CAPITAL MOVEMENTS REVEALED COMPLEXITY OF ISSUE AND CHAIRMAN NIKLASSON AGREED IT WOULD BE NECESSARY TO USE GENERAL LANGUAGE AND AVOID SPECIFICITY, CITING WITH APPROVAL OECD GUIDELINES TEXT.

4. TRANSFER PRICING. (SECTION III(B)(3)) BASIC ISSUE WAS WHETHER IT SHOULD BE TREATED INDEPENDENTLY OF OTHER LIMITED OFFICIAL USE

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SECTIONS (ESPECIALLY TAXATION) END RESULT OF DISCUSSION IS THAT IT PROBABLY WILL BE IN SPITE OF U.S. AND OTHER RESERVATIONS. G-77 COUNTRIES TEND TO VIEW TRANSFER PRICING AS ESPECIALLY MALIGNANT ASPECT OF TNCS IN A RANGE OF ECONOMIC CONCERNS (RBP'S, EMPLOYMENT, TRANSFER OF TECHNOLOGY) WHILE DEVELOPED COUNTRIES DISCUSSED IT PRINCIPALLY AS A TAX PROBLEM. SOME DISCUSSION TOOK PLACE AS TO VARIOUS SOLUTIONS, ESPECIALLY ARMS-LENGTH OR MARKET PRICING, AND THEIR COMPLEXITY, AND THE NEED FOR INTERGOVERNMENTAL COOPERATION. AS TO DISCLOSURE ISSUE, SOME INCLUDING CHAIRMAN, FAVOR HANDLING ALL INFORMATION AND DISCLOSURE ISSUES IN ONE SECTION (III.C.), BUT BHATTI OF INDIA FAVORS SPECIFYING INFO REQUIREMENTS IN EACH SECTION AS NEEDED.

5. TAXATION. (SECTION 14(B)(4)). DISCUSSION WAS BRIEF, SINCE TRANSFER PRICING ALREADY TREATED INDEPENDENTLY. REMAINING SUBSTANTIVE ISSUE IS DISCLOSURE BUT THAT MAY BE TRANSFERRED TO SECTION III.C. WHICH WOULD LEAVE A VACUUM UNDER THE HEADING OF TAXATION. AS ALTERNATIVE TO DELETION, CHAIRMAN SUGGESTED A NEW ANNOTATION ALONG GENERAL LINES THAT TNCS SHOULD NOT MAKE USE OF THEIR

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CORPORATE STRUCTURE TO EVADE TAXES OR REDUCE TAX BASE
IN HOST COUNTRIES BY USE OF TRANSFER PRICES ETC. BEYOND
ACCEPTED COMMERCIAL PRACTICE. U.S. DEL SUGGESTED THIRD
OPTION BASED ON OECD TAXATION GUIDELINES. THERE SEEMED
TO BE A GENERAL CONSENSUS FAVORING CHAIRMAN'S SUGGESTION,
ALTHOUGH U.S. DEL NOTED THAT WE HAD FUNDAMENTAL PROBLEMS
WITH CONCEPT OF REDUCING TAX BASE, AND WOULD ALSO REQUIRE
A REFERENCE TO HOME AS WELL AS HOST COUNTRIES.

6. OTHER ISSUES DEFERRED. (SECTION III(B)(5,6,7) WITH
RESPECT TO RESTRICTIVE BUSINESS PRACTICES, TRANSFER OF
TECHNOLOGY, AND EMPLOYMENT AND LABOR, IT WAS AGREED TO
POSTPONE SUBSTANTIVE DISCUSSION IN LIGHT OF WORK IN
OTHER SPECIALIZED FORA. FORMAL RELATIONSHIP OF ILO
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DECLARATION TO UN CODE (UNDER HEADING OF EMPLOYMENT AND
LABOR) WILL BE DISCUSSED ON THURSDAY WHEN ILO REPRESENTA-
TIVES ARE PRESENT. IT IS UNLIKELY THAT THERE WILL BE A

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L-03 NSC-05 /136 W
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SUBSTANTIVE DISCUSSION OF ILO DECLARATION. AT REQUEST

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OF FRENCH DEL AND G-77, SECRETARIAT WILL PREPARE PAPER ANALYSING RELEVANCE OF WORK IN OTHER FORA, TO UN CODE. U.S. DEL STRESSED THAT SECRETARIAT PAPER SHOULD BE LIMITED TO RESEARCH ON EXISTING AND DEVELOPING TEXTS FOR PROVISIONS RELEVANT TO TNES AND SHOULD NOT SUGGEST NEW LANGUAGE OR SUPPLANT GROUP IN DECIDING USE TO BE MADE OF SUCH TEXTS. NIKLASSON AGREED THAT NO LANGUAGE WOULD BE PREPARED UNTIL GROUP ITSELF HAD DISCUSSED THESE SUBJECTS. HE SUMMARIZED GROUP'S AGREEMENT AS REQUEST FOR PAPER SETTING FORTH THE STATE OF WORK IN OTHER BODIES AND ITS RELEVANCE TO UN CODE. THIS PAPER WILL BE DISTRIBUTED PRIOR TO NEXT IGWG MEETING.

7. CONSUMER PROTECTION. (III.B.8.) OECD DELS STRESSED CONFIDENTIALLY, PARTICULARLY IMPORTANT IN CONTEXT OF DEVELOPMENT OF PRODUCTS, AND THAT RESTRICTIONS IMPOSED BY COUNTRIES ON SPECIFIC PRODUCTS SHOULD BE PUBLIC INFORMATION. U.S. SUPPORTED INTERNATIONAL CONSUMER
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UNION (ICU) PROPOSAL OF INTERNATIONAL REGISTRY OF PRODUCT MARKETING RESTRICTIONS AND PROHIBITIONS, AND NOTED U.S. CONSUMER PROTECTION EFFORTS ARE IN PUBLIC DOMAIN, BUT SAID THIS WAS BROADER ISSUE THAN ONE INVOLVING TNCS, AND SHOULD PROBABLY BE HANDLED ELSEWHERE. LINKAGE TO SECTION IV ISSUES OF INTER-GOVERNMENTAL COOPERATION, PRINCIPLE OF NON-DISCRIMINATION, AND CLARITY AND PREDICTABILITY OF GOVERNMENT REGULATION WAS ALSO MADE BY U.S. AND OTHERS. G-77 INTERVENTIONS FOCUSED ON CASES OF TNC SALES IN LDCS OF PRODUCTS BANNED IN DEVELOPED COUNTRIES, WITH PARTICULAR EMPHASIS ON PHARMACEUTICAL AND CHEMICAL INDUSTRIES. A NUMBER OF G-77 DELS STRESSED INABILITY OO MANY LDCS TO DEVELOP LOCAL LAWS AS A BASIS OR CODE STANDARDS.

8. NIKLASS HELPFULLY STEERED GROUP AWAY FROM DEVELOPING SUSTANTIVE STANDARDS AND TOWARDS HIS ANNOTATIONS TOGETHER WITH REFERENCE TO DOMESTIC AND INTERNATIONAL LEGAL STANDARDS AND NEED FOR COOPERATION, BOTH BETWEEN GOVERNMENTS AND BETWEEN TNCS AND HOST COUNTRIES. ICU REPRESENTATIVE MADE PLEA FOR TNC COMMISSION ENDORSEMENT OF REGISTRY AND ELABORATION OF INTERNATIONAL STANDARDS. IN PRIVATE, U.S. DEL SUGGESTED TO ICU REP THAT ECOSOC WAS THE APPROPRIATE FORUM FOR THIS WORK, WHICH ICU REP ACCEPTED. LEONARD

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: STANDARDS, COMMITTEE MEETINGS, MULTINATIONAL CORPORATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 23 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978USUNN01043
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780127-0338
Format: TEL
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1978/newtext/t19780330/aaaaazcu.tel
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Litigation Code IDs:
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Office: ACTION IO
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3219494
Secure: OPEN
Status: NATIVE
Subject: WORKING GROUP ON CODE OF CONDUCT RELATING TO TRANSNATIONAL CORPORATIONS: MARCH 20 AND 21 SESSIONS.
TAGS: EGEN, EINV, PORG, XX, UN, ECOSOC
To: STATE
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/690c38be-c288-dd11-92da-001cc4696bcc
Review Markings:
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Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014